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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Information presented by the Commissioner for Fundamental Rights of Hungary*.

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the Commissioner for Fundamental Rights of Hungary,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

** Reproduced in the annex as received, in the language of submission only.

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Annex

[English only]

Submission by the Commissioner for Fundamental Rights of Hungary

Mandate of the Commissioner for Fundamental Rights of Hungary

The Commissioner for Fundamental Rights (CFR) is the single "A" status National Human Rights Institution of Hungary celebrating its 20th anniversary this year. The CFR is independent from the government and subject only to the provisions of the Fundamental Law of Hungary and the Acts of the Parliament. The CFR aims to protect and promote fundamental rights with special attention dedicated to the rights of the child, the most vulnerable social groups and people with disabilities. The Commissioner has two deputies: one of them is responsible for protection of the rights of national minorities living in Hungary[1], while the other deputy protects the interests of future generations. The National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) had been established as a separate department within the Office of CFR and started to operate on 1st January 2015.

The CFR is vested with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex officio into the situation of a non-determinable group of people or the implementation of a particular fundamental right. In case of infringement, the CFR addresses a recommendation to the respective authority or its supervisory organ which is obliged to inform him of its position on the merits of the recommendation and on the measures taken within thirty days. Furthermore, the CFR scrutinizes laws, bills and policies and makes proposals for amendment, modification or repeal.

In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness raising activities as well as advocacy. The Commissioner works in close cooperation with other organisations aiming at the promotion of the protection fundamental rights including the civil society. Regarding the international obligations of Hungary, the CFR promotes the ratification of international human rights documents and monitors their implementation (among others by the submission of alternative reports to the treaty bodies of the United Nations).

[1] According to Appendix No. 1 to Act CLXXIX of 2011 on the Rights of Nationalities the following shall qualify as national minorities in Hungary: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serb, Slovak, Slovene and Ukrainian.

Comprehensive Investigation: joint official control practices coordinated by the Miskolc Local Government Police; the local government housing decree; other measures of the Miskolc Local Government regarding housing conditions; and decree modifications by municipalities surrounding Miskolc

Summary of Joint Report No. AJB-1474/2014

1. The Hungarian Civil Liberties Union (Társaság a Szabadságjogokért, TASZ) and the Legal Defence Bureau for National and Ethnic Minorities (Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, NEKI) have submitted a common petition to the Commissioner for Fundamental Rights in March 2014, voicing fundamental rights-based concerns regarding the practice of official control activities coordinated and carried out jointly by the Miskolc Local Government Police (MLGP) and other local authorities. In their petition they claimed that the MLGP is conducting official control activities together with other authorities and institutions in the segregated living areas of Miskolc. These controls focused on the following: the obligation to state the change of address; adherence to the rules regarding the keeping of animals; waste collection contracts; contracts on lease of flats; documents attesting the right to property. Control activities were also carried out regarding sanitation, utilities, social administration and child services. The stated aim of the official control activities was the protection of local government property. The controls were carried out in segregated or impoverished ghetto-like streets and areas mostly inhabited by Roma. Certain locations were visited repeatedly by the authorities and repeated controls were also carried out. Officials from the various authorities were usually present in large numbers when visiting these living areas. It happened that during the controls, the authorities' representatives took a look in the refrigerator, the toilet and the bathroom as well. According to the petitioners, the inhabitants of said areas perceived the raid-like, coordinated joint control activities carried out by officials as harassing and fear-inducing.

Regarding the legal background of the official controls in Miskolc, the petition has indicated that the legal basis of the comprehensive control activities was a decree adopted by the Miskolc Local Government regarding the fundamental rules of community living and the legal consequences of the infringement of these norms; the authorities were mostly controlling adherence to the provisions of this decree. The petitioners have also held that the provisions of the abovementioned decree were incompatible with the Fundamental Law: they overstep the regulatory mandate provided by the Act on Local Governments – they have accordingly requested that the ombudsman investigate the relevant legal regulations as well.

The official control activities carried out commonly but on different legal bases have raised the possibility of the infringement of various fundamental constitutional rights. Having regard to all of the above, the Commissioner for Fundamental Rights and the Deputy Commissioner responsible for the protection of the rights of nationalities have initiated a comprehensive joint ex officio investigation.

Following the initiation of the ex officio investigation, the petitioners have submitted another complaint. In their petition, they have objected to the 8 May 2014 modification of the Miskolc Local Government housing decree, which affected Roma citizens living in rented flats owned by the local government negatively. The modification of the housing decree made it possible to move inhabitants of a low social status living in deep poverty (mostly Roma citizens) outside of the territory of Miskolc. The petitioners have requested that the Commissioner initiate the review of this modification by the Constitutional Court. Furthermore, the petitioners have also drawn attention to the allegedly unlawful conduct of the Miskolc Real Estate Management Ltd. (Miskolci Ingatlangazdálkodó Zrt., MIK), and to the human rights obligations of the local government as regards housing, welfare and child-protection.

Subsequently, the European Roma Rights Centre Foundation (Európai Roma Jogok Központja Alapítvány) and the Chance For Children Foundation (Esélyt a Hátrányos Helyzetű Gyerekeknek Alapítvány) have together submitted a petition to the Commissioner for Fundamental Rights, complaining about the discriminative practice of housing, police and other authorities of the Miskolc Local Government which resulted in the exclusion of the Roma population. As the modification of the local government decree on housing and other related measures of the Local Government concerning housing conditions raised the possibility of the infringement of fundamental rights, the ex officio investigation covered this issue as well.

In January 2015, the petitioners also submitted a petition regarding the modification of the Miskolc housing decree. They have deemed illegal the decrees adopted by municipalities surrounding Miskolc which limit access to social welfare and local government benefits, the right to lease out local government-owned flats, and participation in the public employment programme for disadvantaged individuals who have moved in with financial support from another local government. The petitioners have requested that the Commissioner initiate the review of these decrees by the Constitutional Court. As these local government decrees raised the possibility of the infringement of fundamental rights, the ex officio investigation covered this issue as well.

In the course of their investigation, the Commissioner and the Deputy Commissioner have turned to numerous local authorities and utility providers; and officials from the Office have also conducted on-the-spot investigations in order to be able to gather and thoroughly examine all information, data and circumstances relevant to the investigation. During these on-the-spot activities, the officials have met not only with the relevant local authorities but with the individuals living in the relevant segregated environment as well. In their report, the Commissioner and the Deputy Commissioner emphasize that besides the fundamental rights based approach of the report, the aim was also to draw attention to the issues at hand and to provide constructive criticism.

2. As the conclusion of the report, the Commissioner and the Deputy Commissioner have established that the official control activities were conducted by employees of the various authorities and utility providers jointly, simultaneously, at a previously determined date and time, following a pre-determined route. The controls were organized by the public order adviser of the Miskolc Local Government, with briefing by and the participation of the MLGP. Having regard to these facts, the report has found that the often raid-like, joint, and often mass official control activities conducted in the segregated living areas by local government authorities, public utility providers, and other institutions of different profiles, different competences and different rights of investigation were organized without explicit legal authorization; this is incompatible with the principle of the rule of law and the requirement of legal certainty.

Furthermore, the execution of the official controls resulted in various fundamental rights infringements or raised the immediate risk thereof. The individuals affected by the official controls were unable to properly interpret and follow the legal background and legal basis of the numerous simultaneously conducted activities (which were based on deficient or false interpretation in the first place). All of the above have led to impediments regarding the right to fair procedures and the right to legal remedy. The mass official controls conducted with a preventive intention, with police support, without explicit reasons and often repeatedly have had an intimidating effect and have, according to the standpoint of the Commissioner and the Deputy Commissioner, restricted the right to privacy of the (mostly disadvantaged) individuals – a large proportion of whom were individuals belonging to the Roma minority – without a sufficient constitutional reason and to a disproportionate extent.

Regarding the procedure, the report has found – in line with the resolution of the National Authority for Data Protection and Freedom of Information – that the right of informational self-determination of the concerned individuals was also infringed. The investigation has further established that the joint official control activities were pre-organized, and that the organization and planning of these controls has infringed the requirement of equal treatment. According to available data and documents, more than 90% of the joint official control activities conducted in Miskolc took place in those segregated living areas which house economically disadvantaged, impoverished individuals, most of whom belong to the Roma minority. Having regard to these facts, the Commissioner and the Deputy Commissioner have established that the recurring official controls concentrating on the segregated areas resulted in direct discrimination based on social origin and financial status, and indirect discrimination based on belonging to a minority.

The report emphasizes the firm position of the Commissioner and the Deputy Commissioner that in a democratic state based on the rule of law, having regard to equality before the law, a direct obligation arises to bring the practice of organizing and conducting joint, coordinated official controls in Miskolc which infringe equality and the right to fair procedures to an immediate stop. According to the Commissioner and the Deputy Commissioner, the constitutionally acceptable way to deal with the issue of poverty and exclusion is via appropriate policy measures. They have also emphasized that similar joint control activities must be avoided as regards all Hungarian municipalities.

The investigation has further established that two decrees of the Miskolc Local Government also raise serious fundamental constitutional and legal concerns. Thus the statutory scrutiny procedure by the Government Office of Borsod-Abaúj-Zemplén County and the subsequent petition by the Government Office to the Curia (the highest court of Hungary) was justified and well-founded. The adoption of (and the sanctioning of the infringement of) rules which interfere with the privacy of vulnerable individuals and do not respect equal dignity is objectionable from the point of view of the rule of law and the protection of fundamental rights. According to the report, a provision of a local government decree which makes the reimbursement payable upon the termination of a lease contract with the local government contingent upon the purchase of real estate outside the premises of the municipality (thus quasi conditional upon moving out of the municipality) is unacceptable from the point of view of equal treatment. (Acting upon the petition of the Government Office, the Curia has determined that this provision of the local housing decree was contrary to national law, and has annulled the provision in question.) Similarly, the Commissioner and the Deputy Commissioner have found that the fact that some municipalities surrounding Miskolc have responded to the abovementioned provisions with decrees which are exclusionist in content and violate national law also raises concerns.

3. The Commissioner and the Deputy Commissioner have assembled a list of recommendations addressed to the Miskolc Local Government. They have recommended that the local city council take the following steps.

- The official control activities conducted by large numbers of officials of authorities and public utility providers should be terminated. It should be guaranteed that the procedures and practice of all authorities, institutions and bodies falling under the direction and authority of the Miskolc Local Government abide to the relevant national laws and governmental decrees.

- The local government decree containing the rules of community living (which was declared to infringe national law by the Government Office and was brought before the Curia) should be repealed.

- Effective cooperation should be established with the Hungarian Charity Service of the Order of Malta operating in the segregated areas, and with the professional support

institutions of the local government. Furthermore, relevant institutions should coordinate assistance to prevent evictions from the segregated areas.

- An action plan should be developed to solve the housing issues of families left homeless, in cooperation with the Hungarian Charity Service of the Order of Malta and social, child and family services.

- The local government should take part, cooperating with its professional support institutions and the Hungarian Charity Service of the Order of Malta, in the preparation of the complex programme in development under the professional guidance of the Ministry of Human Resources regarding the phasing-out and the prevention of colony-like living environments in the city.

The Commissioner and the Deputy Commissioner have requested the Minister in charge of the Prime Minister's Office to – in order to guarantee the effective prevention of the consequences of the joint official control activities conducted in Miskolc – investigate, with the assistance of the Government Offices, whether similar coordinated control activities are conducted in the country; and, should the answer be in the affirmative, to take measures to put an end to these practices.

The Commissioner and the Deputy Commissioner have invited the local city councils of the towns of Sátoraljaújhely and Szerencs to immediately repeal the exclusionist local government decrees which make the reimbursement payable to the former lessor upon the termination of a lease contract with the local government contingent upon the purchase of real estate outside the premises of the municipality, and which are in infringement of national law.

The Commissioner and the Deputy Commissioner have requested the Minister of Human Resources to review and investigate the situation and circumstances of the segregated living areas and their inhabitants in Miskolc, with regard to the problems identified by their report.

They have invited the Minister to develop a complex action plan in cooperation with the Miskolc Local Government which determines an exact programme and a task list to be carried out in order to phase out the colony-like living areas and prevent their reappearance, so as to avert housing segregation. Finally they have invited the minister to consider the modification of relevant acts, and to initiate measures which guarantee that appropriate human resources are available to conduct activities related to the protection of children and young persons.

4. With their report, the Commissioner and the Deputy Commissioner draw attention to the unfeasibility and the consequences of the living conditions of individuals living in segregated areas. The number of flats in social housing schemes actually suitable for living is decreasing, and at the same time the rate of eviction of disadvantaged families is constantly increasing. To effectively prevent a massive increase in homelessness – taking into account inter alia the rights of the children concerned – there is an immediate need for communication between the relevant institutions and a coordinated, common response and aid. The report makes it clear that, having regard to the serious fundamental rights concerns, neither the repeated joint official control activities, nor the practice of evictions will be able to solve the problems of or phase out the segregated living areas. The investigation has reaffirmed the findings of the previous report by the ombudsman: the fundamental rights of the impoverished, excluded individuals – particularly vulnerable children and individuals belonging to the Roma minority – living in the segregates areas are seriously infringed due to the severe conditions of housing, employment, education, and circumstances of living in general. The report has established the fact that those living in deep poverty and exclusion cannot change their living circumstances on their own. It also showed that the state and local governments have added responsibilities regarding the

systematic and continuous improvement of the situation of those living in segregation. Since 1997 every single government decree concerning the social integration of the Roma minority has determined tasks regarding colony-like living environments. The National Social Inclusion Strategy of the Government determines the medium-term challenges and targets of the social and labour market integration of those living in poverty, including the Roma, as well as the necessary interventions over a period of 10 years.

Based on their investigation, the Commissioner and the Deputy Commissioner have come to the conclusion that the 13 segregated living areas located in the town place a serious burden on the Miskolc Local Government, representing a challenge that the Local Government will definitely not be able to handle on its own, without the cooperation of civil society and support from the government. These complex problems result in challenges which can evidently not be solved via the resources and possibilities of the Local Government. Law enforcement type responses and constant resettlement do not solve the conflicts but rather deepen them even further. In order to truly solve the problems at hand, Miskolc is obviously in need of professional assistance and targeted subsidies from the state, and an active assistance by civil society.